



FOR CLERK USE ONLY

City Council

Item No. 3

CITY COUNCIL AGENDA FACT SHEET

City Attorney

Department

March 2, 2010

Requested Date

1. Request:

Council Approval

☒Information Only/
Presentation☐

Other (specify)

☐

Hearing

☐

2. Requested Action:

Consider adopting ordinance, by title only, related to Juvenile Curfews.

3. Fiscal Impact:

Revenue:

Increase

☐

Source:

Decrease

☐

Amount:

\$

Cost:

Increase

☐

Source:

N/A

Decrease

☐

Amount:

\$

Does Not Apply

☒

4. Reviewed By:

Finance Dept. on

By:

Comments:

City Attorney on

By:

Comments:

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE:

Action

☐

Filing

☐

Consent

☐

Presentation

☐

Hearing

☐

Other(specify)

☐

Reviewed by: City Clerk

City Manager

Date

Date

**CITY COUNCIL
AGENDA REPORT**

SUBJECT: AN ORDINANCE REPEALING FORMER CHAPTER 9.28 AND ADDING A NEW CHAPTER 9.28 OF THE CALEXICO MUNICIPAL CODE, PERTAINING TO JUVENILE CURFEW

AGENDA DATE: March 2, 2010

PREPARED BY: Jennifer Lyon, City Attorney



RECOMMENDATION: Adopt ordinance by title only, waive full reading of the ordinance.

BACKGROUND:

The City of Calexico has a curfew ordinance, where juveniles are generally not allowed to be in public places or private establishments during curfew hours. On Sunday through Thursday nights, those hours are from 10:00 p.m. until sunrise. On Friday and Saturday nights, the curfew runs from midnight to sunrise.

DISCUSSION:

Recent changes in the law suggest that the City should amend its current curfew ordinance to make it more effective.

Under this new ordinance, curfew hours remain the same, and exceptions for minors accompanied by their parents or responsible adults remain. Also, like in the current code, minors who are lawfully employed will not be kept from working based on the curfew. Minors can still return from the movie theater, go to school or religious events, or run errands for their parents after curfew hours.

The ordinance makes exceptions, though, for minors in vehicles engaged in interstate transit and who exercise their free speech rights. The ordinance also lets minors go to and from permitted activities.

Staff recommends adoption of the draft ordinance to make it more effective.

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO,
CALIFORNIA, REPEALING OLD CHAPTER 9.28 AND ADDING A NEW CHAPTER
9.28 TO THE CALEXICO MUNICIPAL CODE, PERTAINING TO JUVENILE
CURFEW**

WHEREAS, the City of Calexico has a compelling interest in preventing juvenile crime and the victimization of juveniles; and

WHEREAS, law enforcement experience has demonstrated that nighttime juvenile curfews are an effective means of meeting the City's goals of reducing juvenile crime and victimization; and

WHEREAS, the City of Calexico intends to maintain the most effective juvenile nighttime curfew ordinance permissible by law.

**NOW THEREFORE, THE COUNCIL OF THE CITY OF CALEXICO HEREBY
ORDAINS AS FOLLOWS:**

SECTION 1. The above recitals are true and correct.

SECTION 2. Chapter 9.28 of the Calexico Municipal Code is hereby repealed in its entirety.

~~9.28.010 Definitions.~~

~~For purposes of this chapter, the following words shall have the following meanings:~~

~~A. "Emergency" means a sudden unforeseeable combination of circumstances which calls for immediate action.~~

~~B. "Loiter" means to idle, to loaf, to stand idly by, or to walk, drive, or to ride about aimlessly.~~

~~C. "Minor" means anyone under eighteen years of age.~~

~~D. "Public place" means any place or property except private property put to a nonpublic use. (Ord. 954 (part), 1995; Ord. 620 § 1 (part), 1967; prior code § 5311)~~

~~9.28.020 Hours established.~~

~~Every minor is guilty of a misdemeanor who loiters in a public place or trespasses on private property during the following hours:~~

~~A. Year-round Sunday through Thursday:~~

~~1. Ten p.m. to sunrise of the following day.~~

~~B. Year-round Friday through Saturday:~~

~~1. Twelve midnight to sunrise of the following day. (Ord. 954 (part), 1995: Ord. 620 § 1 (part), 1967: prior code § 5312)~~

~~9.28.030 Exceptions.~~

~~This chapter does not apply when a minor is:~~

~~A. Accompanied by a parent, guardian or other person having legal care, custody or control;~~

~~B. Accompanied by the minor's spouse who is not a minor;~~

~~C. On an errand by authority of the parent, guardian or other person having legal care, custody or control;~~

~~D. Participating in or reacting to an emergency situation;~~

~~E. Engaged in a legitimate business, trade, occupation or profession with the consent of parents, guardian or other person having legal care, custody or control;~~

~~F. Attending or returning home forthwith by the most direct route from a meeting, entertainment, or recreational activity directed, supervised or sponsored by a governmental agency, adult service club, church group or school authority;~~

~~G. Returning home forthwith by the most direct route from a public motion picture establishment. (Ord. 954 (part), 1995: Ord. 620 § 1 (part), 1967: prior code § 5313)~~

~~9.28.040 Penalty for violation.~~

~~Any person who violates this chapter is guilty of a misdemeanor and, upon conviction thereof for the first offense, shall be punished by a fine of one hundred fifty dollars or twenty days imprisonment in the county juvenile hall, or both. Any subsequent conviction under this chapter is punishable by a fine of two hundred fifty dollars or thirty days in the county juvenile hall, or both. (Ord. 954 (part), 1995: Ord. 620 § 1 (part), 1967: prior code § 5314)~~

SECTION 3. A new Chapter 9.28 is added to the Calexico Municipal Code, to read as follows:

“CHAPTER 9.28

JUVENILE NIGHTTIME CURFEW

9.28.010 Purpose.

9.28.020 Definitions.

9.28.030 Curfew Restrictions.

9.28.040 Enforcement.

9.28.010 Purpose.

This chapter is intended to reasonably balance the public interest and the protected rights of minors and their parents. A curfew for minors is critical in preserving the health, safety and welfare of the City by protecting against juvenile crime and victimization within the City.

9.28.020 Definitions.

The following definitions shall apply to this chapter:

1. "Be present" means to linger, stay, be present, or to fail to leave when requested to do so by a Peace Officer, owner, operator or person in control of premises.
2. "Curfew hours" are defined as follows:
 - A. Year-round Sunday through Thursday, from Ten p.m. to sunrise of the following day.
 - B. Year-round Friday through Saturday, from Twelve midnight to sunrise of the following day.
3. "Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster, automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
4. "Establishment" means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.
5. "Guardian" means: (1) a person who, under court order, is the guardian of the person of a minor; or (2) a public or private agency with whom a minor has been placed by a court.
6. "Minor" means any person under 18 years of age.
7. "Parent" means a person who is a natural parent, adoptive parent, or stepparent of a minor.
8. "Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.
9. "Responsible adult" means a person at least 18 years of age, authorized by a parent or guardian to have the care and custody of a minor.

10. "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

9.28.30 Curfew restrictions.

A. It is unlawful for any minor to be present in a public place or on the premises of any establishment within the City during curfew hours.

B. It is unlawful for any parent or guardian of a minor knowingly to permit, or by insufficient control to allow the minor to be present in any public place or on the premises of any establishment within the City during curfew hours.

C. It is an affirmative defense under subsection A or B of this section that the minor was:

1. Accompanied by the minor's parent or guardian, by a responsible adult, or by the minor's spouse who is not a minor;
2. On an errand at the direction of the minor's parent or guardian, or responsible adult, without any detour or stop;
3. In a motor vehicle involved in interstate travel;
4. Engaged in a lawful employment activity;
5. Returning home forthwith by the most direct route from a public motion picture establishment;
6. On the sidewalk abutting the minor's residence;
7. Attending an official school, religious, or other recreational activity supervised by one or more adults and sponsored by the City, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by one or more adults and sponsored by City, a civic organization, or another similar entity that takes responsibility for the minor;
8. Exercising First Amendment rights protected by the United States Constitution or Article I, Section 2, of the California Constitution;
9. Emancipated pursuant to law; or
10. Traveling without delay or detour between the minor's home and any activity listed in subparagraphs 1 through 8, or between such activities.

D. Prior to taking any law enforcement action under this chapter, the law enforcement officer shall ask the apparent offender's age and reason for being in the public place or on the premises of the establishment during curfew hours. The law enforcement officer shall not issue a citation or make an arrest under this chapter unless the officer reasonably believes that an offense has occurred and that, based on any responses and other circumstances, no defense under this section is present or applicable.

9.28.40 Enforcement and penalty.

A. Each violation of this chapter constitutes a separate offense.

B. A charge under this chapter may be prosecuted either as a misdemeanor or an infraction. Minors shall be prosecuted in accordance with juvenile court law and procedure.”

SECTION 4. Should any section, clause, or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity of any other portion of this Ordinance and, to that end, the provisions of this Ordinance are severable.

SECTION 5. This Ordinance shall take effect 30 days after its adoption.

SECTION 6. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be posted and published according to law.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Calexico, California, on the 16th day of February, 2010; and **THEREAFTER ADOPTED** at a regular meeting of the City Council of the City of Calexico, California, on the 2nd day of March, 2010, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

DAVID B. OUZAN, MAYOR

ATTEST:

**LOURDES CORDOVA
CITY CLERK**

///

///

APPROVED AS TO FORM:

JENNIFER M. LYON

CITY ATTORNEY

I, City Clerk of the City of Calexico, do hereby certify the foregoing to be an exact copy of Ordinance No. _____ -AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, REPEALING OLD CHAPTER 9.28 AND ADDING A NEW CHAPTER 9.28 TO THE CALEXICO MUNICIPAL CODE, PERTAINING TO JUVENILE CURFEW.

CITY CLERK

DATE